IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/07/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 16439 of 1995

Lakshmi Vilas Bank Employees Union,
represented by its General Secretary. .... Petitioner.

Vs.

1. The Presiding Officer,
Industrial Tribunal,
Madras-600 104.

2. Lakshmi Vilas Bank Ltd.,
represented by its Chairman,
Salem Road, Kathaparai,
Karur. .... Respondents.

Petition under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus as stated therein.

For petitioner: Mr. K. Chandru, Senior counsel
for Mr. D. Hariparanthaman.

For respondents: Mr.V. Karthic for M/s
T.S. Gopalan for R-2.

:ORDER

Aggrieved by the order of the Industrial Tribunal, Madras dated 17-11-94 made in I.D.No. 33 of 86, Lakshmivilas Bank Employees Union through its General Secretary has filed the above writ petition to quash the same and consequently direct the second respondent to pay Special Allowance to 11 workmen covered by the dispute from the dates of continuance till it is withdrawn in the manner known to law together with interest at 18 per cent per annum.

2. The case of the petitioner Union is briefly stated hereunder:
The second respondent Bank is a scheduled bank governed by the provisions of the Banking Companies Regulation Act. In the year 1971, the second respondent established a Data Processing Section at Madras. The said section was kept under the co ntrol of the Accounts Department and it had a sanctioned strength of 15 including 5 Machine Operators and 7 Punch Card Operators besides other

executives. For the purpose of executing the work, the Machine Operators were paid allowance of Rs.152/-p.m. and the Punch Card Operators were paid allowance of Rs.87/- p.m. In order to man the said section, the second respondent called for applications from all qualified employees. On the basis of a selection made by them, appointments were made as per the list of seniority kept for the selected persons. The selected candidates were also sent for training. However, after few years the bank started giving the work on contract basis to a private agency. The petitioner union was not taken into confidence and for making such illegal diversification their Union sent protest letters on 23-10-83 and 2 8-10-83. In order to justify their illegal diversification, the second respondent started transferring employees working in the Data Processing section to different sections and re-designated them as Clerks. They also dis-continued the said allowance paid to them. For doing this action, against 11 employees, the second respondent did not follow any procedure known to law. Therefore, at the instance of the petitioner Union, the matter was referred for adjudication, which resulted in I.D.No.33 of 86 before the first respondent. Various documents were marked on both sides. The first respondent finally passed the impugned award dated 17-11-94, rejecting the claim of the petitioner Union; hence the present writ petition.

3. Heard the learned senior counsel for the petitioner as well as learned counsel for the second respondent bank.

4. After taking me through the appointment orders, the Special Allowance paid for the additional work, the award of the Labour Court, learned senior counsel for the petitioner would contend that inasmuch as the second respondent-Management has not complied with the mandatory provisions of Section 9A of the Industrial Disputes Act and in the absence of specific finding with regard to the said aspect, the award of the Tribunal rejecting the claim of the petitioner Union cannot be sustained. On the other hand, learned counsel appearing for the second respondent bank would contend that the Tribunal has rightly considered the said aspect and rejected their claim.

5. I have carefully considered the rival submissions.

6. There is no dispute that after installation of a machine IBM 402 under the Unit Record system, the machine operators were paying an allowance of Rs.152/- per mensem and punch card operators were paying an allowance of Rs.87/- per mensem. It is the grievance of the petitioner Union that in order to entrust the work with a private agency on contract basis, the persons concerned who were dealing with the work or their Union were not given notice in terms of Section 9A of the Industrial Disputes Act (in short "the Act"). It is clear from Section 9A that no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter, specified in the 4th Schedule, shall effect such change,-

(a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected;

(b) within 21 days of giving such notice.

Among the various conditions prescribed in the 4th Schedule, we are concerned with condition Nos. 1,3 and 8. Even according to the second respondent bank, for machine operators and punch card operators allowances were paid. If that is so, in the light of Condition No.3 in 4 th Schedule and in view of Section 9A of the Act, the persons concerned or the Union are entitled notice in the manner prescribed. A perusal of the order of the Industrial Tribunal shows that neither it has applied its mind with reference to the statutory provisions nor though referred to the judgment of the Supreme Court in Indian Overseas Bank Ltd. v. Their Workmen (1969 FJR p 457), follow the same. In the light of the provisions referred to above, it is incumbent on the part of the Tribunal to give a specific finding whether Section 9A of the Act was complied with or not. Without giving such finding, the Tribunal committed an error in holding that the Union cannot question the bank regarding the abolition of the Data Processing Section since "it is left to the will and pleasure of the respondent bank". The approach of the Tribunal cannot be appreciated.

7. In Indian Overseas Bank Ltd. v. Their Workmen (196 9 F.L.R. 108) which relates to Indian Overseas Bank, wherein similar question was considered, the Supreme Court, after considering the similar contentions as well as Section 9A Schedule IV Item 3, has held that till the key allowance was stopped in accordance with law, the workmen are entitled to the said allowance. In our case, there is no specific finding regarding notice in terms of Section 9A of the Act read with Schedule IV Condition 3. It is also relevant to note the decision of the Supreme Court in Indian Oil Corporation v. Workmen (197 5 II LLJ 319), wherein Their Lordships have held that unilateral withdrawal of compensatory allowance at the instance of the employer would adversely affect the interests of workers.

8. The above decisions as well as the statutory provisions referred to in the earlier part of my order would clearly show that before effecting any change in the condition of service, it is mandatory on the part of the employer to give notice to the workmen likely to be affected in the prescribed manner of the nature of the change proposed to be effected. It is also clear that the employer is not permitted to effect changes within 21 days of giving such notice. In the absence of such clear and categorical finding, I am unable to sustain the impugned award of the Tribunal. On this ground, the award of the first respondent dated 17-11-94 is quashed and the matter is remitted to the Industrial Tribunal, Madras-first respondent herein with a direction to restore I.D.No.33 of 86 on its file and dispose of the same afresh as directed above within a period of 3 (Three) months from the date of receipt of a copy of this Order. Writ Petition is allowed to the extent mentioned above. No costs.
Index:- Yes
Internet: Yes
R.B.
To:-
The Presiding Officer, Industrial Tribunal,
Madras-600 104.
P. SATHASIVAM, J.

Order in
W.P.No. 16439 of 1995
Dt:- 18-07-2002